

REPORT

*Of the Committee on Naval Affairs, on the Petition
of Capt. Charles Stewart.*

FEBRUARY 5, 1816.

Read, and, with the accompanying documents, ordered to be
printed.

The committee on naval affairs, to whom was referred the petition of capt. Charles Stewart, late commander of the frigate Constitution, praying to be paid the value of the *Levant*, a British ship of war captured by the Constitution in her late cruise, and taken by force out of the harbour of Port Praya, a neutral port, by a squadron of British ships, have had the said petition under consideration, and make the following

REPORT.....

The petitioner states, that on the 20th of February, 1815, with the frigate Constitution under his command, whilst cruising in the neighbourhood of the island of Madeira, he fell in with two British ships of war, the *Cyane*, mounting 34 guns, and the *Levant*, mounting 21; that the Constitution brought the two ships to action, and captured both, after a conflict of forty minutes; that having taken possession of her prizes, the Constitution proceeded on her cruise, and, on the 10th of March, anchored with her prizes, in Port Praya,

in St. Jago, one of the Cape de Verd islands, belonging to Portugal; that on the next day, March the 11th, whilst lying in the said port, they discovered a squadron of ships, which ultimately proved to be British, consisting of three sail, two of 68 and one of fifty guns, commanded by sir George Collier; that the Constitution, with her prizes, immediately got under way, and with much difficulty escaped the enemy, who had approached very near, under cover of a thick fog, before they were discovered; that the Constitution and Cyane got off without being brought to action by so superior a force, and the Levant, which had moved in a direction to divide the attention of the enemy, being pursued, was enabled to get back into Port Praya, and anchored close under the batteries, thinking the enemy would respect the neutrality of the port; that in that situation she was attacked, and taken possession of by the enemy, without any attempt on the part of the Portuguese to prevent the outrage.

The petitioner asks of Congress, to pay to the officers and crew of the Constitution the value of the Levant, she having been captured by them on the high seas, and forcibly taken from a neutral port by the enemy.

The committee are of opinion, that the petitioners have not a right to demand of the United States the value of the said prize; though the government have a right to demand of the Portuguese government compensation for the outrage committed in one of their ports; and if compensation is made, the amount ought to be paid to the captors, yet in the many and great losses sustained by our citizens during the late war in Europe by the violation of their neutral rights, it has not been the practice of the government to make

compensation for such losses. Were it to be done in this case the captors would be placed in a more eligible situation than if the outrage had not been committed; in that case they would have had to encounter the ordinary dangers of the sea in bringing their prize into port, and also the hazard of recapture by the enemy. But proceeding on the principle acted on by congress in other cases which occurred during the late war, of making some compensation for the gallantry and good conduct of the officers and men, where they did not succeed in getting their prizes into port, and such gallantry and good conduct having been signally displayed in this action, the proper tribunals having determined that the force of the enemy was superior, the committee, taking the case of the Frolic, captured by the Wasp, and recaptured by the enemy, as a proper criterion, (the force of the Levant being about equal to that of the Frolic,) and the compensation made being \$ 25,000, recommend the passage of an act authorizing the payment of that sum to the officers and crew of the Constitution, to be deducted from the value of the Levant, provided the government succeed in obtaining such value from the Portuguese government. For this purpose they herewith report a bill.

Navy Department,

January 5th, 1816.

SIR,

In compliance with the instructions of the honourable committee upon Naval Affairs, communicated by your letter of the 29th ultimo, I have the honour to enclose to you papers No. 1 to 7, which contain all the information, in the possession of this department, relative to the capture of the British vessels of war the *Cyane* and *Levant*, by the United States frigate *Constitution*, under the command of captain Charles Stewart, of the United States navy.

I have the honour to be,

Very respectfully,

Your obedient servant,

B. W. CROWNINSHIELD.

Hon. James Pleasants, junior,

Chairman of the committee on

Naval Affairs, House of Representatives.

Minutes of the chase of the United States frigate Constitution by an English squadron of three ships, from out the harbour of Port Praya, Island of St. Jago.

Commences with fresh breezes and foggy weather. At 5 minutes past 12 discovered a large ship through the fog, standing in for Port Praya; at 8 minutes past 12 discovered two other large ships astern of her, also standing in for the port. From their general appearance supposed them to be one of the enemy's squadrons, and from the little respect hitherto paid by them to neutral waters, I deemed it most prudent to put to sea. The signal was made to the Cyane and Levant to get under weigh. At 12 after meridian, with our topsails set, we cut our cable and got under weigh, (when the Portuguese opened a fire on us from several of their batteries on shore,) the prize ships following our motions and stood out of the harbour of Port Praya, close under East Point, passing the enemy's squadron about gun shot to windward of them; crossed our topgallant yards, and set foresail, mainsail, spanker, flying jib, and topgallant sails. The enemy, seeing us under weigh, tacked ship, and made all sail in chase of us. As far as we could judge of their rates, from the thickness of the weather, supposed them two ships of the line, and one frigate. At half past meridian, cut away the boats towing astern, 1st cutter and gig; at one P. M. found our sailing about equal with the ship on our quarter, but the frigate luffing, gaining our wake, and rather dropping astern of us; finding the Cyane dropping astern, and to leeward, and the frigate gaining on her fast, I found it impossible to

save her if she continued on the same course, without having the Constitution brought to action by their whole force ; I made the signal, at ten minutes past one P. M. to her to tack ship, which was complied with. This manœuvre, I conceived, would detach one of the enemy's ships in pursuit of her, while, at the same time, from her position, she would be enabled to reach the anchorage at Port Praya, before the detached ship could come up with her, but if they did not tack after her, it would afford her an opportunity to double their rear, and make her escape before the wind. They all continued in full chase of the Levant and this ship. The ship on our lee quarter firing, by divisions, broadsides, her shot falling short of us. At 3 P.M. by our having dropped the Levant considerably, her situation became (from the position of the enemy's frigate) similar to the Cyane, it became necessary to separate also from the Levant, or risque this ship being brought to action to cover her. I made the signal, at 5 minutes past 3 for her to tack, which was complied with. At 12 minutes past 3 the whole of the enemy's squadron tacked in pursuit of the Levant, and gave up the pursuit of this ship. This sacrifice of the Levant became necessary for the preservation of the Constitution. Sailing master Hixon, midshipman Varnum, one boatswain's mate, and 12 men were absent on duty in the 5th cutter to bring the cartel brig under our stern.

MINUTES of the action between the United States frigate Constitution and his majesty's ships Cyane and Levant, on the 20th February, 1815.

Commences with light breezes from the eastward and cloudy weather. At 1 discovered a sail two points on the larboard bow; hauled up and made sail in chase. At a quarter past 1 made the sail to be a ship. At three quarters past 1 discovered another sail a-head. Made them out at 2 P. M. to be both ships standing close hauled with their starboard tacks on board. At 4 P. M. the weathermost ship made signals, and bore up for her consort, then about ten miles to leeward. We bore up after her, and set lower top-mast, topgallant, and royal studding-sails in chase. At half past 4 carried away our main royal-masts, took in the sails and got another prepared. At 5 P. M. commenced firing on the chase from our two larboard bow guns; our shot falling short ceased firing. At half past 5 finding it impossible to prevent their junction, cleared ship for action, then about 4 miles from the two ships. At 45 minutes past 5, they made all sail, close hauled by the wind in hopes of getting to windward of us. At 55 minutes past 5, finding themselves disappointed in their object, and we were closing with them fast, they shortened sail, and formed on a line of wind, about half a cable's length from each other. At 6 P. M., having them under command of our battery, hoisted our colours, which was answered by both ships hoisting English ensigns. At 5 minutes past 6 ranged up on the starboard side of the sternmost ship, about 300

yards distant, and commenced the action by broadsides, both ships returning our fire with great spirit for about fifteen minutes; then the fire of the enemy beginning to slacken, and the great column of smoke collected under our lee induced us to cease our fire, to ascertain their positions and conditions. In about 3 minutes, the smoke clearing away, we found ourselves abreast of the headmost ship, the sternmost ship luffing up for our larboard quarter; we poured a broadside into the headmost ship, and then braced aback our main and mizen topsails, and backed astern under cover of the smoke, abreast the sternmost ship, when the action was continued with spirit and considerable effect, until 35 minutes past 6, when the enemy's fire again slackened, and we discovered the headmost bearing up; filled our topsails; shot ahead and gave her two stern rakes. We then discovered the sternmost ship wearing also; wore ship immediately after her, and gave her a stern rake, she luffing too on our starboard bows, and giving us her larboard broadside; we ranged up on her larboard quarter, within hail, and was about to give her our starboard broadside, when she struck her colours, fired a lee gun, and yielded. At 50 minutes past 6 took possession of his majesty's ship Cyane, captain Gordon Falcon, mounting 34 guns. At 8 P. M. filled away after her consort, which was still in sight to leeward. At half past 8 found her standing towards us, with her starboard tacks close hauled, with top-gallant-sails set, and colours flying. At 50 minutes past 8, ranged close along to windward of her, on opposite tacks, and exchanged broadsides; wore immediately under her stern and raked her with a broadside; she then crowded all sail, and endeav-

oured to escape by running; hauled on board our tacks, set spanker and flying jib in chase. At half past 9 commenced firing on her from our starboard bow chaser; gave her several shot which cut her spars and rigging considerably. At 10 P. M., finding they could not escape, fired a gun, struck her colours, and yielded. We immediately took possession of his majesty's ship *Levant*, hon. captain George Douglass, mounting 21 guns. At 1 A. M. the damages of our rigging was repaired, sails shifted, and the ship in fighting condition.

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GENERAL ORDERS.

U. S. frigate Constitution, February 23d, 1815.

Captain Stewart takes the first opportunity of returning his thanks to the officers, seamen, ordinary seamen, and marines, of this ship, for their gallantry, order, and discipline, displayed by all under his command, on the night of the 20th instant, while engaged with his majesty's late ships, the *Cyane* and *Levant*, and congratulates them on the glorious result of their exertions; a result which could not have been produced against so superior a force, commanded by distinguished officers, without the energy and order so conspicuously exhibited by all, on that occasion. We were not only outnumbered in guns, and weight of metal, by the enemy, but had also to contend with a more active class of vessels, and a divided

force, which gave to them every advantage. Be assured, that the laurels you have acquired for yourselves will never fade, and that the share of glory you have given to your country will be hailed by your fellow-citizens with the greatest satisfaction; and posterity, in beholding the trophies gained by your gallant predecessors in victory, shall view with grateful sensations, the two which you have added to their number.

You will accept his thanks for the promptness with which you repaired the damages and secured the three ships, and he assures you that it will not be least among your merits, when it is known that in one hour after a contest so severe, your own ship was ready to fight another action, and your prizes enabled to make sail.

The excellent example hitherto shown by our naval victors in their respect towards the persons and property of a subdued enemy, he trusts will not be deviated from by any under his command. Surely there can be none among you who can be desirous of tarnishing so much your well earned glory as to hesitate between the choice of being scornfully pointed at as a plunderer, or to perceive the finger of satisfaction selecting you as a hero. If therefore, any of you have unwarily possessed yourselves improperly, of either public or private property, he commands you to give it immediately to the commanding officer. You surely cannot wish to bring disgrace on your commander or your officers, whom you have so gallantly supported.

It is much to be regretted, that on occasions like the present, the commander is not permitted to see with his own eyes, the distinguished merits of each officer, that he might thank them individually for their exertions, but as all must have

done their duty well to produce such decisive effect, he begs they will receive his thanks collectively.

He tenders to the officers commanding the gun-deck, fore-castle, and quarter-deck divisions, his thanks for the steady and incessant fire kept up by their batteries, the vivacity of which nothing could surpass. To captain Henderson and lieutenant Freeman, commanding the marines, he owes his grateful thanks for the lively and well directed fire kept up by the detachment under their command. He thanks Mr. Hixon and the officers stationed on the fore-castle and tops, for their steady attention to orders, and the promptness with which they replaced every thing important that was shot away. To Mr. Pottinger and the officers superintending the magazines and passages, he gives his thanks for the facility with which every essential was furnished the batteries from their departments. To doctor Kearney and his assistants in the cockpit, he feels great obligations for their humanity and skill in relieving and assisting the wounded.

Capt. Stewart begs lieut. Ballard to accept his thanks for the prompt assistance he gave him in all the operations and manœuvres of the ship; for the alacrity with which every order was attended to, and the promptness with which they were executed; and he assures him that the gallantry and good conduct displayed by him on that occasion will make a lasting impression on his gratitude. To Mr. Humphreys, commanding the flag-guard, and the officers attached to him as aids, he gives his thanks, and assures them that he is highly satisfied with their gallantry and support.

*United States' Frigate Constitution,
off New-York, May 18, 1815.*

SIR,

Agreeable to an act of Congress, I have the pleasure to transmit to you, the flags of his britannic majesty's late ships, Cyane and Levant, by captain Henderson, commanding the detachment of marines on board the Constitution, who I beg leave to recommend to your notice.

Capt. Henderson is also the bearer of one of the Constitution's muskets, which I request your permission to deposite in the Navy Department, as an evidence of the veracity of the late enemy.

I am very respectfully, &c.

(Signed)

CHS. STEWART.

Hon. B. W. Crowninshield,
Secretary of the Navy, Washington.

*Extract from the Log-Book of ship Levant, harbour
of Port Praya, Saturday March 11, 1815.*

These twenty-four hours commence with moderate breezes and thick hazy weather; all hands employed in refitting ship, the top-gallant yards on deck and sails unbent to repair. At 0h. 25m. P. M. discovered three large ships bearing S. W. by W. distant four or five miles; wind N. E. signal

from the Constitution to get under weigh ; cut and made sail on a wind on the larboard tack, crossed top-gallant and main royal yards, and set the sails ; at 1h. the enemy evidently falling astern and to leeward of the Constitution, but gaining fast on the Cyane and Levant ; 1h. 30m. the Cyane tacked by signal from the Constitution ; at 2h. lost sight of the Cyane ; at 2h. 30m. the headmost ship, the Newcastle, four points on the lee bow, distant three miles ; the Acasta two points on the lee bow, distant two and an half miles ; and the Leander on the lee quarter two and an half miles distant ; tacked by signal from the Constitution, the enemy's squadron immediately tacking in chase ; at three lost sight of the Constitution, same time made the highland to the S. E. of the harbour ; at 3h. 50m. finding it impossible to escape by keeping the wind from our very great inferiority of sailing ; the Acasta having gained to windward of our wake, and the other ships neared us very much ; it was determined to bear up for the harbour, distant four or five miles on the lee bow, the neutrality of which we were all under the strongest belief the enemy would not violate ; 3h. 35m. kept away one point and set the stay-sails, when the Leander, sir George Collier, opened his fire, the shot passing over us and falling on the neutral shore ; at 3h. 50m. the Newcastle, lord George Stewart, and Acasta, captain Kerr, opened their fire upon us, cutting away much of our rigging and upper sails, which circumstance gave them the advantage of keeping off and luffing to so as to bring their broadsides to bear without materially altering their position ; at 4h. anchored in four fathoms water within 150 yards of the shore, and under a very strong battery ; at 4h. 5m. the Acasta took a position on our quarter, distant half a cable's

length, from which she kept up a constant fire from her bow guns. Finding that the enemy, regardless of our situation, continued their fire from all their ships, the officers were called together, when it was determined that longer to receive their fire without being able to return a single gun, was only to expose the lives of men rendered valuable to their country, both by their long and faithful services, and by their recent exploits. At 4h. 15m. the colours were hauled down, notwithstanding which, the *Leander* and *Newcastle* both passed near, wore ship, and in wearing, wantonly fired their broadsides into us; the *Acasta*, captain Kerr, still keeping up his fire from his bow guns, until the colours were hoisted half up and hauled down again, as a signal that we had surrendered. At 4h 30m. a boat with an officer from the *Acasta* came on board and said he was ordered to take charge of the ship in his majesty's name. On lieut. Ballard's remonstrating at their firing after he had struck, the reply was, that they had only obeyed the signal of their commodore. During the time of our approach to the harbour, as well as when getting under way previously from it, we were fired upon from a battery which the prisoners whom we had landed in the morning had taken possession of, and from which we understand the Portuguese made no exertions to dislodge them, although very many of the shot fired by the squadron passed over or through us and fell into their town, several of them passing through the houses comprising the residence of the governor.

March 17th, 1815.

Statement of the re-capture of the ship Levant, prize to the United States' frigate, Constitution, by the British Squadron under the command of sir George Collier, while lying in the neutral port of Port Praya.

At noon discovered three large ships in the offing; cut and made sail, by signal from the Constitution, the Cyane in company. At 30 minutes past 1, P. M. the Cyane tacked, by signal, from the Constitution. At 2 lost sight of her; at 30 minutes past 2, tacked, by signal from the Constitution, the enemy's squadron taking in chase; at 3 lost sight of the Constitution; at 30 minutes past 3, finding the squadron gaining on us very fast, it was determined to bear up for the harbour again. At 35 minutes past 3, the Leander, sir George Collier, opened her fire; the shot passing over us and falling on the neutral shore. At 50 minutes past 3, the Newcastle, lord George Stewart, and Acasta, capt. Kerr, opened and kept up a very brisk fire on us. At 4 anchored within a cable's length of the shore, and under a very strong battery. At 5 minutes past 4 the Acasta took position on our quarter, distant half a cable's length, from which she kept up a constant fire upon us; lieut. Ballard, finding that the enemy disregarded the neutrality of the port, and our situation, ordered the colours to be hauled down, in hopes the enemy would cease firing. At 15 minutes past 4 the colours were hauled down; notwithstanding which the Leander and Newcastle, both, passed

near and wantonly fired their broadsides into us, wore ship, and in wearing repeated their fire; the *Acasta*, captain Kerr, still keeping up his fire upon us, until the colours were hoisted half up, and hauled down again. At 30 minutes past 4 a boat and an officer from the *Acasta* came on board, and said he had orders to take charge of the ship in his majesty's name. On lieutenant Ballard's remonstrating at their conduct in a neutral port, the reply was, they only obeyed the signal of their commodore. During the time we were getting under way, and on our approach to the harbour, we were fired upon by a battery manned by British prisoners, which we had previously landed, and from which, we understood, the Portugese made no exertion to dislodge them; although many of the shot from the squadron passed over us into the town, several of which went through the governor's house. Four of our men swam on shore while the firing continued; on landing they were taken up by the British marines, and returned on board the squadron as prisoners of war.

The above is a plain statement of facts; and can be substantiated by the oaths of seventy or eighty persons.

SAML. C. HIXON,

Sailing Master, U. S. frigate Constitution.

A. Y. HUMPHREYS,

*Acting Purser to the ship Levant, of the
U. S. frigate Constitution.*

Commonwealth of Massachusetts.

Suffolk, ss. Boston, July 14th, 1815, Personally appeared, Samuel C. Hixon and A. Y. Humphreys, and made oath to the truth of the foregoing statements by them subscribed.

Before me,

WILLIAM STEVENSON,

Notary Public and Justice of the Peace:

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LETTER

TO THE HONORABLE SENATE OF THE MASSACHUSETTS
IN SENATE, JANUARY 18, 1844.

DEAR SENATORS,

I have the honor to acknowledge the receipt of your letter of the 14th inst., in relation to the proposed amendment to the Constitution of the Commonwealth, which was passed by the House of Representatives on the 10th inst.

The amendment proposed is, "That the Legislature shall have power to alter the mode of electing the Governor and Judges of the Supreme Court."

The Senate has the honor to receive your letter of the 14th inst., in relation to the proposed amendment to the Constitution of the Commonwealth, which was passed by the House of Representatives on the 10th inst.

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PETITION

Of Capt. Charles Stewart, on behalf of himself, the officers, and crew of the United States ship Constitution.

January 3d, 1816.

Referred to the Naval Committee.

February 5th, 1816,

Report made, accompanied with a Bill rewarding, &c. No. 67.

To the honourable the Senate and House of Representatives of the United States of America, in Congress assembled,

The petition of the subscriber, respectfully sheweth, that on the 20th day of February, 1815, the United States frigate Constitution, then under his command, did, in pursuance of the orders of the late honourable Secretary of the Navy, William Jones, overtake on the high seas, about sixty leagues from the island of Madeira, his britannic majesty's ships of war the Cyane of 34 guns, commanded by captain Gordon Falcon, and the Levant of 21 guns, commanded by capt. the hon. George Douglas, both post captains in the navy

of Great Britain, and did there bring to action, engage with, and capture the said two ships of war, the *Cyane* and *Levant*, after a sharp conflict of forty minutes; and that your petitioner did take possession of the two prizes aforesaid, and proceed in the frigate *Constitution* with them to the island of *St. Jago*, one of the *Cape de Verd*, in the possession of the troops and subjects of the prince regent of Portugal, with whom we were at peace, and from whom there had issued a declaration of neutrality when the war between the United States and Great Britain was made known to him; that your petitioner, having come to an anchor with the *Constitution* and the above-named prizes, in *Port Praya*, in the aforesaid island of *St Jago*, on the 10th day of March, 1815; discovered on the following day, (while preparations were making by your petitioner to devest himself of his prisoners, by sending them on parole to Barbadoes agreeable to his instructions,) off the port, a squadron of three ships of war, belonging to the king of Great Britain, commanded by his officers, generally, and under the command of the honourable sir George Collier, particularly, consisting of the *Leander*, of 68 guns, *Newcastle* of 68 guns, and *Acasta* of 50 guns; and that the said squadron by means of, and covered by, a thick fog, approached the ship *Constitution* and her two prizes within three miles before they were discovered, which near approach left no time for your petitioner to hesitate or deliberate on the situation of your good ship the *Constitution* and her two prizes, but obliged him for the security of that valuable vessel entrusted to his care, to get under weigh and rescue her from the probable grasp of the enemy, which your petitioner did, taking with him the two prize ships aforesaid, that they might be used according

to circumstances, and for the purpose of saving the Constitution; all of which was done according to the best skill and judgment of your petitioner; and your precious ship the Constitution returned in safety to the port of Boston.

And your petitioner humbly begs leave to state, to your honourable body, that while they were in the act of getting under weigh in the harbour of Port Praya, the flag of the prince regent of Portugal was hoisted on two several forts, and a fire opened from their batteries upon the Constitution and her two prizes; several shot from them passing both over and striking near the bends of the Constitution, that after your petitioner had derived all the advantages he could from his prizes aforesaid, the Levant returned into the harbour of Port Praya, and came to anchor close to the batteries thereof, where she was soon after attacked by the aforesaid squadron, under the command of the aforesaid sir George Collier, and forcibly taken possession of by them and carried from out of the harbour of Port Praya aforesaid, without the troops, garrison, or subjects of the prince regent of Portugal making any resistance or hindrance whatever, as they were in duty bound to do, within the harbours and neutral waters of the prince regent of Portugal.

Your petitioner, therefore, for and in behalf of himself, the gallant officers, and crew of the frigate Constitution under his command, and in consideration of their being so unlawfully and unjustly robbed and deprived of the usual advantages that would accrue to them, for their gallantry, in engaging and subduing the aforesaid two ships of war belonging to the king of Great Britain, humbly begs your honourable body will take this, their case, into consideration; and that you will

be pleased to grant to them the value of the said ship *Levant*, of which they have been deprived as above stated; and your petitioner will ever pray, &c. &c.

CHARLES STEWART,

*late Commander of the United States
Frigate Constitution,*

Philadelphia, Dec. 22, 1815.

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